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ESSENTIAL HUMAN RIGHTS
EDITORIAL

ANNUAL MEETING POSTPONED TO DECEMBER
WAR EMERGENCY ACTION

LAWYER! WHAT OF THE MORROW?
BOMBAY LAW JOURNAL

WHOLE BAR ORGANIZATION—A NECESSITY
FREDERICK W. C. WEBB

A LAWYER'S TRUST
HERBERT HARLEY

UNITED STATES COMMISSIONERS
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AMERICAN JUDICATURE SOCIETY
Ann Arbor, Michigan

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Essential Human Rights

"Every one has the right to have his criminal and civil liabilities and his rights determined without undue delay by fair public trial by a competent tribunal before which he has had opportunity for a full hearing. The state has a duty to maintain adequate tribunals and procedures to make this right effective."

THIS paragraph is Article VII of a "Statement of Essential Human Rights," recently drafted by a committee of leading jurists and political scientists representing the principal cultures of the world, appointed by the American Law Institute, as an important contribution to the plans for establishment of a world organization for the preservation of peace, liberty and justice.

We print it here because it constitutes a concise and admirable text for the judicial administration improvement program on a local and national as well as international scale. The first part states the objectives of an ideal system of administration of justice, objectives that cannot be fully attained without a modern, well-equipped and efficient judicial system; and the second part makes the maintenance of that system a primary responsibility of the government.

"Without undue delay" requires the use of simple, speedy and efficient procedure, pre-trial, civil, criminal and appellate; "a competent tribunal" means a system of courts well organized and managed, presided over by able, honest and independent judges carefully selected and adequately compensated; and "a full hearing" calls for adequate facilities for presentation of each side, confrontation of witnesses and representation by counsel. If the latter requirement is satisfactorily met there will be provided a well-trained, well organized, upright and responsible bar.

Here is a high standard for the nations of the world, and for every state and community in this country as well. No part of it is impossible of achievement, and every part has already reached substantial fulfillment somewhere or other. To bring to the people of our own communities, our country and the world the fullest possible enjoyment of these precious rights should be the hope and aim of all those who appreciate the blessings of justice.

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Annual Meeting Postponed until December

The annual meeting of the American Judicature Society, normally held at this time of year, has been postponed until December along with that of the American Bar Association, with which it has met in recent years. It is hoped that circumstances will be such as to permit a gathering at that time, although no definite assurance can as yet be given. Unless existing plans are changed, the meeting, when held, will be in Cincinnati, Ohio. Further announcement will be made in the October JOURNAL.

Lawyer! What of the Morrow?

IT IS SAID THAT the whole world is in a flux, in a crisis, at the crossroads, and that on the coming of peace there will be ushered in a different social, economic and political structure from that existing in the pre-war period. Post-war reconstruction schemes are in the air, and much intelligence, labor and research are being devoted to the subject.

A question is naturally asked in some quarters, whether a learned profession such as the legal profession will stand unaffected by the present turmoil. The profession as such has during the past been a conservative institution. It has not supported change unless due cause was made to justify a change. Furthermore, it has not concerned itself with matters not cognate to the practice of law in the law courts. Subjects such as education (apart from legal education), public health, public utilities, regulation of industry and commerce, ownership and control of natural resources, taxation have been treated as outside the scope of the profession. As regards freedom of association, freedom of speech and expression, freedom of the press, freedom from arbitrary arrest, and freedom from arbitrary legal process, members of the profession have sought to vindicate the exercise of the right in individual cases coming before the courts, but the profession as such has stood aloof from taking its share in a crusade against unconstitutionalism, injustice, illegal oppression and exploitation.

In the early period of the present century, a vakil was looked upon with respect; a solicitor with awe; and a "ballister" as something legendary, distant and divine. Today the profession is regarded by the people as a necessary evil.

Without going into the merits of the controversy, it may be considered whether during the post-war period the legal profession should be either necessary or evil. As to the former, there can be only one answer. Life is going to be a more complicated affair than hitherto. Life and law go together. And lawyers are the *pujaries* of the law. The continuity of the profession is, therefore, assured. It should be remembered, however, that the proposition "it is not the years that one puts into his life, it is the life that he puts into his years" applies equally to the profession.

The question whether the legal profession should permit itself to be considered an evil causes heart-searching. No self-respecting body welcomes or likes to lie under such a designation. Has the profession deserved such an opprobrious epithet? How should it put itself to rights with the people?

The answer to the question can be given not by this or that individual speaking on behalf of the profession. It can be given only by the body of the profession and not in words only but in deed also.

The legal profession is partly to blame for the sorry plight in which it finds itself. Its organizational strength is poor. Its leadership is negative. Its ideology is timid. It lacks direction and method. Its stars, such as they are (with a few exceptions) move in their own orbit and love to shine in isolated splendour. The profession seems oblivious to the lesson of the Great War, *viz.*, that there is no safety in isolation. It has not taken the public into its confidence, by explaining to it the importance of jurisprudence in national life and the part the profession plays in the develop-

ment of jurisprudence, the efforts it makes to improve the law and the administration of law, and the strength of its conviction that the ultimate justification of its existence is the rendering of public service. This explanation should be given not at and before meetings of the profession itself. The profession should come out. It should go before the public. It should be among the public, and instead of behaving like an ostrich, face it squarely and by fact and argument convince and satisfy the public mind on these points—assuming, of course, that the profession holds the conviction and has the requisite strength of conviction.

The profession has a great leeway to make if it is to be a respectable and respected profession. If its voice is to be heard, its influence is to be felt, it must look beyond "bread and butter," beyond the library and beyond the court and concern itself, besides, with matters of public policy. Then alone will it take the public with it.

The legal profession should give the largest measure of leadership it can, and help to guide and shape the destinies of the people in the people's interests. It should concern itself with the danger to civil liberties owing to the combination in one person of judicial and executive authority, legislation by ordinances and rules, legislative delegation, deprivation of right to appeal to ordinary tribunals, exemption of agents of the Crown from legal process, immunity from legal liability for torts, and, generally, growth of bureaucracy and administrative absolutism in the guise of wartime controls and the ousting of our courts and lawyers from jurisdiction and authority to protect the rights of persons and property against discretion based on radical theories and against arbitrary powers exercised by officials who recognize no responsibility to the legislature, the electorate or our courts. It should also contribute to the solution of the great post-war problems that the approaching peace clothes with a sense of urgency. The role of the profession is not merely of settling individual conflicts: collectively, it has to participate in the broader aspects of legal ordering and in the forward march of civilization by law. In a word, it has to take the place to which it is entitled in the ranks of public service.

The present time and needs constitute a standing challenge to the profession. Will the profession take up the challenge? Or will it prefer to continue in the estimation of the public as a "necessary evil?" Lawyers alone can give the answer.—*Bombay Law Journal.*

Bar Associations Should Advertise the Need for Legal Service

Of course it is improper to permit a lawyer to advertise his ability, his equipment, or his successes. He should not be permitted to advertise that he has graduated from a better school than his fellow practitioners, nor that he has a better library, nor that he has had more successful cases, nor that he has had wider experiences, nor any other fact that makes a claim that he stands out above or is in any way superior to his fellow lawyers. This principle is well grounded in the thought of the profession.

There is a kind of advertising that is being approved by some of our associations, and more and more of our associations are adopting it. That is the advertising of the value and the necessity of legal service. We are living in an age of fast business, and advertising has become an integral part of business. We have competition among laymen which we seek to suppress. We have not been wholly successful in our efforts to suppress this competition. If the public were educated concerning the value of the lawyer's service a long step would have been taken toward ridding ourselves of this competition.

If the lawsuits and the accompanying expense caused by improperly prepared instruments were publicized, the public would soon learn to be more careful in its selection of the person to draft deeds, mortgages, wills and contracts, and to prepare tax returns. Instance after instance can be recalled by any lawyer with a few years' practice, where litigation could have been avoided and expense saved had the instrument been drawn by a skilled artisan in the first place.

The public and the profession could both profit by carefully worded advertisements sponsored by the profession as a whole. Such would not lower the dignity of the profession and would result in more business for the lawyers and less trouble and expense to the public.—*Kentucky State Bar Journal.*

Whole Bar Organization—A Necessity

FREDERICK W. C. WEBB

"Improvement of the administration of justice, and increase in the public's pride in our courts and in their esteem for our profession, the usual reasons assigned for bar cohesion, are absolutely essential to the public welfare, and, without other reasons, supply ample incentive for whole bar organization. But above and beyond these mighty objectives, it is literally true that creation and exercise of the beneficent power which will flow from unity in the legal profession are necessary if our historic institutions are to be preserved."

IN SELECTING the topic of this paper—"Whole Bar Organization—A Necessity"—it is realized that this Association is again having brought to its attention a controversial subject of many year's standing. However, when any proposal affecting the legal profession and the public seems so sound in theory and practice as whole bar organization, and has the support of eminent figures in the profession like those later mentioned, such a proposal should not be buried among our archives until we are sure that we thoroughly understand and evaluate the movement and then find it without sufficient merit to warrant our support. In the belief that there is still misunderstanding and underestimation of the subject in Maryland, and in the hope of contributing something more to its clarification, this paper has been undertaken.

By way of introduction it may be interesting to sketch briefly, first, the position occupied by the legal profession in early America, and then the conditions obtaining in the profession in Maryland which primarily motivated the committee of the Alleghany County Bar in issuing the call for this Association's formation. From that background the spirit and object of this paper may be more readily conveyed.

The late Colonial and the early American bar was an extraordinary one. It had its real roots in the English Inns of Court where, at one period shortly prior to the Revolution, as many as 115 young men from the American colonies were students and rubbed elbows with the future chief justices, Kenyon and Ellenborough, and the future chancellors, Thurlow, Eldon and Erskine. Among them were 16 Marylanders, including Daniel Dulany, the younger, Charles Carroll of Carrollton, and William Paca. The bar in consequence was steeped in all the traditions of the English barrister. Bench and bar were a unity. They controlled admissions and excluded the unfit and the unworthy. Their associations were constant and intimate. They rode circuit together. The bar participated in or listened to the trials of all cases. They attended opinion days and heard opinions read and later discussed and criticized them, freely and frankly, most often upon adjournment to some nearby tavern. Bench and bar ate, drank and lived together more often than not. The legal profession—bench and bar—literally lived and had their being as a whole united in the law. They represented the intelligentsia—in the better sense of that word—of that day. They were looked to for leadership and guidance on most matters affecting the public. They occupied a position of power for good which perhaps no other group of citizens enjoyed or were privileged to fulfill, then or since.

Small wonder then that the bench and bar of our young republic furnished pre-eminent leadership in its formation and early development. Of the fifty-six signers of the Declaration of Independence, twenty-five were lawyers; of the fifty-five members of the Federal Constitutional Convention, thirty-one were lawyers, of whom four had studied in the Inner Temple, and one at Oxford, under Blackstone; and in the First Congress, ten of the twenty-nine senators and seventeen of the sixty-five representatives were lawyers. The early American bar was truly an aristocracy of character and capacity and well deserved the esteem in which it was and still is held.

In the nineteenth century, however, the legal profession collided, head on, among other things, with the concept of American govern-

[1] Mr. Webb is a member of the Salisbury, Md., bar. This was his presidential address at the annual meeting of the Maryland State Bar Association, Baltimore, June 29, 1945.

ment—that men should suffer as little restraint as possible in the enjoyment of their free and equal births. That concept, it was contended, should be no less applicable to the legal profession than to any other walk of life. The mass appeal of the argument had its effect. The result, in due time, was relaxation of the standards of bar fitness and worthiness until in some places they became virtually non-existent. Many were admitted to the bar lacking in tradition, training, capacity and character necessary to the bar's exalted position in our national and community life. Judges, to preserve their self respect, endeavored to level themselves on a stratum above much of the bar and thus the whole fraternity of bench and bar was sadly disrupted, and the bench became cloistered from the bar. The bar brought disrepute and discredit upon itself which goodly numbers of traditionally minded practitioners could not overcome. The postulate that authority to practice law was a property right, unfettered by any duty to society as an integral functionary in the administration of justice, rather than an exalted privilege, succeeded in dealing the legal profession a sad blow in the minds of the undiscriminating and uninformed public and gravely reduced its dignity and its mighty potentialities for the public weal.

STATE BAR ASSOCIATION ORGANIZED

To combat this "degradation of the bar," as some have called it, it is apparent that this Association was brought into being. That this deplorable condition existed in Maryland is shown by the address of our first President—the Honorable James McSherry—then Chief Judge of the Court of Appeals of Maryland—delivered at this Association's Second Annual Convention, at Ocean City, Maryland, on July 27, 1897, when he said:

"I confess I feel a deep humiliation in admitting before an audience of intelligent and honorable Maryland lawyers that there is need of drastic measures to protect the bar of our state from the contamination of incompetent and unworthy practitioners. But the fact that something must be done is conceded, or if not conceded, is obvious; and the duty to speak plainly on the subject and to squarely face the situation is imperative. There was a time when no occasion existed to discuss such a theme. No bar in the Country has ever stood higher than the Maryland bar. The renown of its leaders and of many judges who have stepped from its ranks to the bench, stretches far beyond the borders of our chivalric commonwealth. * * * What Maryland has done in the past she is capable of doing again. My friends! let us bring the whole Maryland bar back to the exalted standard of former days, and let us elevate it to the equally high position which its acknowledged leaders at this time occupy, and then the proudest and most distinguished encomium which can be spoken of each of its members will be to say of him 'he is a Maryland lawyer.'"

Under those circumstances it is easy to imagine the serious state of the minds of our founders, and their very definite purpose, in asserting, in Article II of our Constitution, that this Association was formed "to advance the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to uphold the standard of integrity, honor and courtesy in the legal profession, to encourage legal education, and to cultivate a spirit of cordiality and brotherhood among the members of the (Maryland) bar."

It is our misfortune that the proceedings of our Association's first meeting were recorded in substance but not in detail. By that omission we are denied access to the discussions preceding the adoption of the various articles of our Constitution. No doubt the debates would be well worth reading.

Article III, as then adopted, after providing that the Association's membership should consist of "The members of the legal profession of the State of Maryland attending" that Convention "provided they shall during its present session, sign the Constitution and pay the admission fee hereinafter provided," also made provision for additional members in these words:

"Any other member of the legal profession in good standing, residing or practicing in the state of Maryland, who shall have been at the bar of this state for at least three years, may become a member upon nomination and vote of the Association or action of its Committee on Admissions, as hereinafter provided."

That limitation upon membership was followed by provision in Article IV that "One negative vote in every five shall suffice to defeat an election."

Thus, while the record shows that the Committee of the Alleghany County Bar issued the call "to the lawyers of the State of Maryland" which resulted in the meeting at the Blue Mountain House on August 28, 1896, when our Constitution was adopted, the articles of that Constitution excluded all bar members of less

than three years admission and all others whom twenty percent of the members voting on any application for admission deemed unworthy or undesirable prospective brother members.

Evidently the three year rule met with opposition. On page 4 of the 1896 Report this appears:

"The third section—relating to Membership—was read. Mr. Ellegood, of Salisbury, thought that the words 'three years' in that section should be stricken out, and so moved. This motion was seconded and provoked much discussion. The vote being taken on Mr. Ellegood's motion, it was lost by a viva voce vote. On motion, duly seconded, the third section was adopted by the Association."

Our Association, therefore, was not only voluntary in its inception, but exclusive from its first meeting, and so it remains. Articles III and IV still are parts of our Constitution unchanged in any basic feature. Incidentally, we are even in law purely a voluntary Association. It will no doubt surprise many of you to know that the Association is not incorporated and never has been.

It may be safely assumed that those indicted by Judge McSherry for "degradation of the Bar" were never thought of as members of this Association, and far be it from us to decry the propriety or wisdom of its organization on that exclusive basis. Under the conditions which necessitated the creation of the Association only those imbued with the traditional duties and opportunities of the bar could then have been expected to promote its objectives. Sound leadership or the proper counsel could not be looked for from those responsible for bar degradation. Likewise, to retrace the retrogression from unity back to unity by compulsory membership through statutory processes was no doubt considered undesirable in one fell swoop even if that end could have been achieved. Better one step in the right direction and, as the military might say—consolidation of that position—and then another towards the ideal our founders strove for—the reinstatement of the legal profession to the position it occupied in its Golden Age.

TIME TO TAKE THE NEXT STEP

This paper is predicated on the assumption that if our profession's Golden Age is ever to be achieved again, consolidation of our first step has now proceeded sufficiently to justify another step as far reaching as the organization of this Association in 1896.

Forty-nine years have elapsed since 1896 and in few, if any, of those years has our Association failed to sponsor and give great impetus to one or more plans or programs or policies to meet the governmental, social and economic needs of our people.

One of the Association's first accomplishments was the creation, by legislative act in 1898, of the State Board of Law Examiners, and the elevation of the standards for bar admission, including in later years ever higher pre-legal and legal educational requirements. Simplification and expedition of pleading and practice, both at law and in equity, have also originated in this Association. The Courts and their members have been the object of our eternal interest and vigilance, even to the weighty extent of whether or not their Honors of the Court of Appeals should wear gowns. That grave question brought about in 1898, one of the most extensive and acrimonious debates ever to occur in this Association. The opposition prevailed by 32 votes to 28. We have not neglected the substantive law of our State. In fact, the forty-nine Association Annual Reports are so full of accomplishment, and disclose the origin of so much in Maryland law which we, from long use and acceptance today take for granted, that the Reports are far along the road to a liberal education in themselves. Nor have we neglected legal ethics. There has always been a Grievance Committee as required by our constitution and those committees have never failed to deal fairly and properly, so far as the records show, with every case presented to them, although, fortunately or unfortunately, cases presented apparently have been few and far between.

This Association truly has been an immeasurably constructive force for good in the State of Maryland for forty-nine years, and, in retrospect, its existence could not wisely have been spared by the public or the legal profession here. We have supplied many of the needs and eliminated not a few of the evils revealed by Judge McSherry.

But with all our good works, let us not forget that the task laid down for us by Judge McSherry when he admonished us to "bring the whole Maryland Bar back to the exalted standard of former days" is far from accom-

plished. We have come a long way in many respects, but one hesitates to assert that the descriptive phrase, "He is a Maryland lawyer," has much, if any, weightier significance or distinction today than when Judge McSherry spoke forty-eight years ago. We will agree, however, that the ideal of Judge McSherry is today equally worthy of the whole profession's interest and efforts.

One of the many superb addresses recorded in the Reports of this Association was delivered by Omer F. Hershey, Esq., of the Baltimore Bar, at the 1925 Convention, on the subject "The Passing of the Lawyer's Primacy." Conceding that the loss of primacy was due to causes beyond as well as within the control of our profession, Mr. Hershey said:

"That our primacy has been affected by lack of professional solidarity and esprit de corps, I think is true. * * * Many new forms of professional activities have actually outclassed us in esprit and effective organization. The profession of medicine has almost had a new birth within our generation. Engineering, journalism and business are now organized as professions, have professional schools, professional ethics and professional solidarity. * * * It may be said that the legal profession has never been organized in any real sense. * * * Large numbers of persons are now in the profession in every large city who are wholly unknown to their fellow practitioners. * * * Large numbers have become specialists. * * * Many good lawyers are mere cogs and clerks in big legal machines; and others evolve special bars of their own in collections, bankruptcy, Volsteadism, taxation and the like. * * * In our larger cities like New York and Chicago one can distinguish a distinct stratification of the bar. At the top a well educated, well trained stratum, and an uneducated and untrained stratum at the bottom, with some groups often well advertised, who operate in the twilight zone of respectability. * * * This discordance of the profession and want of discriminating organization has not helped our primacy; for unfortunately, to the general public a lawyer is a lawyer, and the profession is really judged as much by its black sheep as by its white ones. * * * It should mean more than it does now to be called to the profession of the law and to be called a lawyer. * * * He should be seen and see himself as a member of a profession in whose keeping are all the covenants and safeguards of organized society. * * * Whatever the reason, there is a general feeling that the businessman handles his work and his institutions better than the lawyer, so that there is no public pride in either the Courts or the profession. This is not so in England. There the man on the street is proud of English justice; and the credit for this must go to their better organized profession."

Mr. Hershey is quoted at such length because the conditions of twenty years ago that he so graphically described are with us today unsolved and magnified. We are still largely unorganized. We still have to regain our primacy.

THE TWO THOUSAND OUTSIDERS

Our Association far from embraces the whole profession in Maryland. There are only about 750 of us out of a total of approximately 2750 Maryland lawyers. Those 2000 missing brethren are not among us for one of two reasons. Either is deplorable. They are eligible by our standards but indifferent to our objects or our methods, or at least twenty percent of our voting members do not think them worthy or want them as a part of us. Obviously, therefore, our Association either is lacking in that something necessary to arouse the whole bar of Maryland to its duties and responsibilities, or there are Maryland lawyers sorely wanting in the qualities of character and capacity essential to the lawyers of Judge McSherry's ideal. We must concede that there are among the 2000 lawyers not in our membership hundreds who either need us or from want of whose interest and participation in our activities our tasks are less well done.

One group we actually legislate from our midst. Their exclusion from bar organization is impossible to justify today.

Under our existing law and rules governing bar admission prospective students are required to establish their character and fitness to become lawyers as conditions precedent to the chain of events finally resulting in admission. But once admitted those individuals, at the threshhold of our great profession, about to face the real tests of character and fitness essential to their own and the public welfare, are excluded for three long years from our fraternity of their brethren. In those years, no doubt in most cases, lifetime standards of professional conduct and proficiency are adopted, for better or for worse. There can never be a period in the lives of lawyers when the stimulus of professional traditions, and the corrective influence derived from bar association membership, could be more vital. The great need for that stimulus and corrective influence, and the pity of its absence, is repeatedly brought home to the State Board of Law Ex-

aminers in the performance of their duties.

It is too bad that Mr. Ellegood's motion to eliminate the three year rule failed in 1896. But irrespective of the reasons impelling the majority of that day, those reasons do not exist now. The three year rule should be abolished by this Association as quickly as constitutional procedure will permit.

Nor is there any other bar organization in Maryland embracing the local bars in any real sense. The Baltimore City Bar Association lately had as members a scarce sixty percent of the lawyers there. In the twenty-three Counties there may be five active local associations and in a few others skeletal ones. In at least half the Counties, there is no bar association whatsoever.

Thus if it is desirable to reestablish the primacy of our profession, and if no segment of the bar here can wisely be omitted in that process, we simply cannot say that our voluntary and exclusive association, or any other extant organization in Maryland, is the vehicle best constituted and fitted to achieve that end. On the contrary, we must admit from our experience that to accomplish fully the good of which our profession is capable, the bar must be wholly and not partially or selectively organized.

Dean Roscoe Pound, of the Harvard Law School, who, in his address to this Association, on June 26, 1943, included whole bar organization as one of the steps on his agenda for improving the administration of justice, in 1945, wrote this comment:

"It is really important under the circumstances of today to have an organization which can speak authoritatively for the whole profession. Law is under attack throughout the world and the best energies of an organized profession in this country are called for if we are to preserve our Anglo-Saxon legal inheritance * * *. To have our practicing lawyers united in an association for the purposes for which voluntary bar associations now exist is a great gain for the profession and for the law. Originally a profession was a body of men living together and professing a common calling as a learned art in the spirit of a public service. We need to keep as much of this idea of the profession alive as we can, and an integrated bar seems to be the most likely way to achieve it in this country today. I earnestly hope that Maryland may adopt the integrated bar."

The record of whole bar organization in England and the many States of our Union where it prevails seems to prove that Dean Pound and Mr. Hershey have correctly evaluated that status. To say the least, the evidence is most persuasive that the subject merits the immediate, comprehensive and sympathetic consideration of the Maryland bar under the leadership of this Association — the only state-wide instrumentality available here to undertake the task.

EXISTING BAR ORGANIZATIONS NEEDED

Some may regard the suggestion of whole bar organization in Maryland as an invitation to our existing bar associations to commit hara-kiri. That is not true. The essence of whole bar organization is compulsory membership of every practicing lawyer in a legislative incorporation or court ordered organization of the bar and the payment of annual dues, in most States from $5.00 to $10.00, as a condition to membership, original or continued. That is to say, bar association membership — not voluntary and exclusive as we are — but compulsory and all-inclusive — male and female — white, yellow and black. Our Association has no legal existence, and if it did, it does not possess the power of compulsion so essential to whole bar organization. What is here urged is not change in this Association amounting to its re-creation or extinction, but the creation of a new and wholly independent organization of the entire bar of Maryland. When and if that is accomplished, there will be no more reason to change or abandon this Association, or the Baltimore City Bar Association, or any other local association, than there now is to abolish the voluntary and exclusive law clubs of Baltimore City. The voluntary and exclusive Bar Association in Virginia has continued to function despite the existence of the seven-year old and vigorous compulsory association there. Experience has also proved that local bar associations, especially, seem to take on new life when buttressed by whole bar state associations.

The subject of whole bar organization also seems heretofore to have been considered by opponents or skeptics, here and elsewhere, with too little emphasis upon its broader and more elevated objective and its real basis — to reestablish the whole legal profession to its former high plane in the imperative public interest—and too often as a new-fangled attempt to regiment and discipline a group to whom such possibilities are thoroughly abhorrent. It

is hoped that it may be now understood in Maryland, for once and all, that the principal object of whole bar organization, and the most impelling justification for its accomplishment, is not discipline. Nor is its effect offensive regimentation. Discipline is only one by-product. Regimentation has no real significance, historically or perspectively. The paramount justification and necessity for whole bar organization is the public welfare.

No debasing task and no difficult intellectual feat is imposed by the suggestion that the subject of whole bar organization should be considered from the broad vista of the public welfare, and that each of us in that consideration should submerge our individual inclinations and preferences.

Lord Buckmaster, former Lord Chancellor of England, in his address on "The Romance of the Law," had this to say of our profession:

"What is the subject of a lawyer's work? * * * Whatever it is that men may do, their hopes, their fear, their anger, their pleasure, their vagaries, their delights, all of these things form the medley of our briefs. There is no learning that comes amiss to us. The most erudite scientific work is a matter with which we may have to deal. There is no phase in all the many mysteries of the human heart which may not be the subject of the case that we have to consider. There is no form of knowledge that is alien to our perfect equipment and the man who confines himself to a meaner view is debasing a great profession."

This versatility of the legal profession imposes a tremendous duty and burden upon us outside our technical functions as lawyers. It invests us with inherent power which no other group possesses or can so effectively wield. Improvement of the administration of justice, and increase in the public's pride in our courts and in their esteem for our profession, the usual reasons assigned for bar cohesion, are absolutely essential to the public's welfare, and, without other reasons, supply ample incentive for whole bar organization. But above and beyond those mighty objectives, it is literally true that creation and exercise of the beneficent power which will flow from unity in the legal profession are necessary if our historic institutions are to be preserved. For the achievement of that end alone, whole bar organization is justified.

No group in American life today should more fully comprehend than lawyers generally all that is involved in what is called the "American Way of Life." No group in America equals us in opportunity to understand and fear the ever-accelerated pace at which individual liberty is day by day frittered away, directly or indirectly, by various pressure groups in the pursuit of their various selfish ends. None should recognize more clearly, and combat more vigorously, that monster of the Twentieth Century—totalitarianism—which spurns both the sanctity of the individual and the dignity of man. None possess the power to expose and oppose, as we do, trends which lead ultimately to the destruction and chaos less trained minds cannot see or feel until too late. Management, labor, churchmen, medical men, educators, authors, engineers, accountants, artists, none of them are privileged as are we of the legal profession, by our training and in our daily tasks, to provide wise leadership to the public of today and tomorrow if democracy is to be maintained. We should possess and exert, individually and collectively, more influence than we do in a field more familiar to us than to any other group. We should become, in the abstract at all times, and very definitely and concretely when specific occasions demand, zealous advocates of all that is governmentally wise and good for all Americans.

Expression of these thoughts is not novel in this Association. In the President's Address in 1914, the late Judge Walter I. Dawkins said:

"When we stand on the mountain peaks of our civic life and consider the vast and constantly increasing and almost impossible questions that lie in the plains below, calling constantly for solution, questions involving the very life blood, well-being and peace of our people, we cannot fail to realize what part the *real* lawyer could and should take in the public life of our country."

SOME CONSEQUENCES OF OUR WEAKNESS

The lack of bar cohesion, and the consequent absence of our historic primacy, are largely responsible for the prevalence of most of the questionable theories and practices of government today. If we had asserted ourselves as a united whole, instead of complaining as individuals or minority groups, and if we had really informed and led the public, they would never have tolerated the steps by which our governmental system of checks and balances has become unbalanced; they would never have tolerated our present system whereby bureaucrats make whimsical laws, which our duly

elected legislators never dreamed of, and deny our historic right of trial by jury in their enforcement. The public, under the leadership of the bar of the whole United States, aroused as a unit as it probably had not been for years on years, stopped in its tracks the vicious Supreme Court Packing Plan of 1937. The vital leadership our profession then provided can be repeated ad infinitum when the occasions arise, if we are really united. When we perceive and dwell upon our potentialities in moulding public opinion for good once we speak as a profession, to achieve those potentialities amounts to our most solemn duty.

Much more can be said in behalf of whole bar organization which will not be undertaken or repeated in this paper. Time prohibits an exhaustive discussion of its many merits. Here it is sufficient to observe that where the system has prevailed it has proved, in the words of Dean Pound, "a great gain for the profession and for the law." But great and far-reaching as are those gains, neither is paramount to the opportunity whole bar organization affords our profession to instill in the minds of the general public knowledge of and faith in our ideals of freedom and democracy, and neither is necessary to supplement the compelling virtue of that opportunity.

OBJECTIONS EXAMINED

Some concede that there will be gains from whole bar organization. But they say that there are inherent in the plan individual sacrifices and potential dangers far exceeding those gains. To explore some of those objections may not be amiss.

The chief objection usually advanced by those reluctant to espouse whole bar organization is that its adoption means the coercion of lawyers by law into a body they do not wish to join and the exaction of dues they do not want to pay. They regard those requirements as iniquitous. Some choose to call them regimentation.

Of course, our profession in Maryland has been regulated since 1898 against those incapable of passing our bar examinations, and for more than fifteen years against those disqualified by lack of character and fitness, regardless of their intellectual attainments. So that if whole bar organization is regimentation, our profession has known compulsion and restraint by law for quite a while. We have accepted that regulation as a matter of course. No principle is more firmly imbedded in the law of our land than that our liberties or licenses may be circumscribed for the common good. Therefore, if there is implicit in whole bar organization good comparable to that obtained from the prerequisites to bar admission, or good comparable to the motor vehicles speed laws or the saloon closing laws, for instance, whole bar organization is no more offensively compulsory and no more regimentation than those laws. Its object, in fact, is so much more deeply imbedded in the fundamentals of the public welfare that only the most superficial comparison with the motor vehicle and saloon laws dissipates the will-of-the-wisp or bugaboo substance of the catch word "regimentation" in the consideration of whole bar organization.

Naturally after whole bar organization some lawyers may not find themselves quite so comfortable while enjoying the luxury of closing their eyes and their minds to the duties and responsibilities and traditions of our profession. Our awakening will no doubt arouse some from the inertia and lethargy in which, perhaps, they would prefer to remain. But if whole bar organization can accomplish that it is long overdue even though regimentation is the process of its achievement. Their recovery from those opiates, their response to a new incentive, will give the victims of inertia and lethargy at least the satisfaction of knowing that their new parts are likely to be effective.

That the cry of regimentation is more of a "bogeyman" than a reality is also profoundly illustrated by the example of the legal profession in England.

For centuries the Bar of England has been a self-governing body to which members have been admitted only after legal education in one of the four Inns of Court, Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn. The Inns are composed of students, barristers and benchers. They are governed by elective benchers who regulate upon the fitness of all students and exercise disciplinary powers over students and barristers. The student must be vouched for by two barristers of his Inn as a fit and proper person. He must have had a university education. He needs about two hundred pounds for the payment of fees to his Inn. His legal education consists of twelve terms, covering

three years, and after successful examination, and with the recommendation of two benchers of his Inn as to his fitness, he may be admitted to the bar. Without that recommendation all his previous efforts are unavailing. There is no appeal from the decision of the benchers. The courts have nothing to do with admissions or disbarments, except that disbarment decisions of the benchers are appealable to the Lord Chancellor and the judges of the High Court of Justice. After admission the practitioner, or barrister as he is then called, must maintain his membership and pay an annual fee to his Inn, the amount of which is fixed by the benchers. The young barrister usually attaches himself to an older barrister to acquire experience, and at times the senior barrister is paid a fee of as much as one thousand pounds for permission to use his chambers and assist in his work. The first court appearance of a barrister is as a "junior," but at forty years or over he may apply for permission to wear a silk gown instead of a stuff gown and attain the rank of King's Counsel, a necessary prerequisite to judicial office. A barrister has no inchoate right to be called to the bench, and if he is proposed by one bencher and seconded by another, the benchers may refuse to elect him and need assign no reason for their refusal. Barristers cannot have any dealings with private individuals. They may be employed only by solicitors. They cannot sue for fees. If their fees are not paid they have no remedy whatsoever, said to be a survival from the days of the Knights Templar, the original Barristers. The solicitor pays the barrister's fee and is entitled to charge it to his client and make recovery through a cost taxing master. To become a solicitor a barrister must be disbarred. Incidentally, the earliest known use of the term "barrister" is in the Black Books of Lincoln's Inn, in Trinity Term, 1455.

Solicitors in England, or attorneys as they are sometimes called, also have had their organization, known as "The Law Society," by royal charter since 1845. Applicants for admission as solicitors are made to the Master of the Rolls through the Law Society and all applicants must pass examinations under its management. Every solicitor is compelled to maintain membership in the Society and to procure from it an annual certificate at a fee of one pound. Solicitors are prohibited from appearance in the law courts and from holding judicial office. They enjoy the right to practice in certain other courts, and only the right of audience in open court or in chambers in still others. Their rights are severely circumscribed in many other respects by law and custom.

If the legal profession in England, possessing the admirable character, great capacity, wholesome dignity and public esteem which cannot be denied it, not only tolerates but flourishes under the restraints of the Inns of Court and the Law Society, nothing but good need be looked for from whole bar organization by Marylanders in Maryland, a people and a land as deeply rooted in England and English law and English professional traditions as any American State. In fact, it would be a hopeless task to maintain with intellectual conviction that whole bar organization in Maryland would be regimentation in the sense we detest the usual implications of that word, and especially so since the generally adopted scheme of whole bar organization in America falls far short of the English system.

MORE THAN DISCIPLINE PROPOSED

Others have opposed whole bar organization on the ground that its primary object is the discipline of recalcitrant lawyers by active measures unrelentingly applied, and that it is beneath the dignity and beyond the obligation of our profession and wholly unjustified to coerce all lawyers, reputable and disreputable, into one organization whose chief purpose is reformation of the disreputable. Even if discipline of the disreputable were the chief object of whole bar organization, which is, of course, far from true, many would still favor that organization. But discipline is not the chief objective of whole bar organization, nor have disciplinary measures constituted more than minor activities of those organizations. Of course, disciplinary activities have occurred many, many times, but in the vast majority of instances recalcitrants have mended their ways merely by the corrective influence of their bar organization membership with its varied reminders that disobedience to high professional standards is too hazardous to ignore. Thus professional ideals are achieved in the main, not by the application of sanctions, but from a heart and mind self-disciplined by precept and consciousness of necessity, a by-product in

itself worthy of whole bar organization.

Some have also objected to whole bar organization because they resent parity in such an association with those whom they consider unworthy of that status. The character and capacity of a lawyer are much more important to the public, his actual or prospective clients, than those qualities can possibly be to any association of lawyers. If he is unworthy of membership in an association of lawyers, it is imperative that he be prohibited from the practice of our profession. This objection is immaterial. Our duty is plain under any and all forms or types of bar organization.

Another objection to whole bar organization is the expressed fear that the admission of all lawyers to such a body would make it possible for control to be seized by a group unworthy to lead. Democracy, as we know it, invariably involves that risk, and when the more worthy and better equipped have shirked their duties and responsibilities the risk has materialized into deplorable reality. But when those duties and responsibilities have been met by the worthy and the equipped, peril and disaster have been avoided. That this risk of democracy has not proved harmful in places where whole bar organization prevails is the great assurance that it will not prove harmful here. As might be expected, it has been found that those who provided leadership in the voluntary and exclusive associations continued their activities in the greater organization. The only discernible difference has been the accession of recruits to that far-seeing and public-spirited group from the broader field of membership.

There are also misgivings that whole bar organization cannot be safely undertaken in Maryland because of the disparity in numbers of lawyers in Baltimore City and the Counties. To that objection there can be no better answer than the experience of this Association. No County lawyer can possibly complain that you of Baltimore City have abused us or discriminated against us by your numerical preponderance or otherwise. It seems safe to assume that no less fair and reasonable recognition would be accorded county lawyers in a whole bar organization.

Dean Pound has said one could write a book on whole bar organization. He is right. But to avoid the paper assuming too nearly the proportion of a book, and to spare you a further endurance test, suffice it to say with respect to the other objections or misgivings on whole bar organization, that every possible argument against the plan that has been or could be made in Maryland has been made elsewhere and proved later, by actual experience, unreal and imaginary.

THREE POSSIBLE METHODS

There are three methods of accomplishing whole bar organization. (1) By order of the highest court of the state where, as in Massachusetts, regulation of the practice of law is recognized as within the domain of the courts and legislative intervention is unnecessary. (2) By legislative act incorporating the bar and prescribing in detail its every power and function. And (3) by legislative act incorporating the bar, prescribing that all practicing lawyers shall be members, fixing the maximum annual dues, and empowering the highest court in the State to determine and establish by rule or order all other powers and functions. The last method is the so-called "Kentucky Plan." It was first adopted in Kentucky and has been followed in Virginia and other states. The soundness of that plan is self-evident. Few lawyers would prefer to place our profession's destinies elsewhere than in the courts. That plan also permits greater flexibility for such adjustments as actual experience from time to time proves wise or necessary.

As to the success of whole bar organization in other American states little more need be related to this Association. No state where the step has been taken has later discarded it. Our reports are replete with favorable testimonials from the bench and the bar from the Atlantic to the Pacific. In the preparation of this paper some additional evidence on the subject has been sought from distinguished members of our profession, probably known to all of us, and intimately to some. The paper would be incomplete without reference to the views expressed by a few of them. None reported the slightest doubt or criticism.

Monte M. Lemmann, Esq., of the New Orleans Bar, wrote this on April 26, 1945, about the Louisiana situation:

"Our Incorporated Bar, as it now exists, has worked well. * * * It is the general opinion among leaders of the Bar that the present setup is preferable to the pre-existing voluntary Association * * *."

Henry Upson Sims, Esq., of the Birmingham Bar, after explaining that compulsory Bar Association membership had prevailed in Alabama since 1923, and that his state was the first in America to achieve that result, on March 1, 1945, wrote:

"The whole system works beautifully and nobody is dissatisfied as far as I know. I heartily recommend it to Maryland."

On February 3, 1945, our esteemed friend, Honorable John J. Parker, Chief Judge of the Fourth United States Circuit Court of Appeals, wrote:

"I * * * hasten to say that the integration of the bar, both in Virginia and North Carolina, has been a great success and I do not think any thoughtful lawyer in either state would think for a moment of abandoning the steps * * *. The benefits from a thing of this sort are, of course, of an intangible nature, but I have a very definite feeling that the atmosphere of the bar in both states has been greatly improved as a result of integration. I would not presume to speak of your local problems in Maryland but I have no doubt that you would find integration beneficial there just as it has been found beneficial in other states. In the last several years I have been all over the United States a number of times; and wherever integration has been tried the members of the bar whose opinion is worth anything have unhesitatingly acclaimed it a success."

Judge L. R. Varser, of Lumberton, North Carolina, formerly a member of the North Carolina Supreme Court, on February 3, 1945, wrote in respect to the subject in his state:

"The State Bar has been very successful in North Carolina and has apparently passed through the experimental stage and is now accepted as a permanent part of the legal profession. It works well and efficiently and without fear or favor."

As to the success or failure of the movement in our neighboring State of Virginia, closely related to us, both in interests and in traditions, the opinions of several lawyers there were sought with the following results:

Andrew B. Christian, Esq., of the Richmond Bar, on February 2, 1945, wrote:

"Our statute integrating the bar has been, I should say, an unqualified success in the opinion of ninety-five percent of the lawyers and ninety-five percent of the judges."

Thomas H. Willcox, Esq., of the Norfolk Bar, on February 3, 1945, wrote:

"You will make no mistake in advocating the legal integration of your State Bar. If you can get a proper bill adopted and then get officers who are competent and energetic to administer the bar, you will find it very successful."

Frank W. Rogers, Esq., of the Roanoke Bar, on February 5, 1945, wrote:

"The enabling act for our integrated bar was passed by the General Assembly in 1938 after a long hard and bitter fight. The vote in the legislature was quite close and there was a considerable body of opposers among the lawyers. After the first year or two of operation, that opposition entirely disappeared. I am confident that there are not now five lawyers in Virginia who would advocate repeal."

Benjamin W. Mears, Esq., of the Eastville Bar, in agricultural Northampton County on the Eastern Shore, on February 14, 1945, wrote:

"I am of the opinion that the present organization is quite an improvement over the old voluntary association. I think it has improved the spirit of cordiality among the members of the bar and this has had a tendency for the bar as a whole to work together as a unit in advancing the science of jurisprudence and in the reform of judicial procedure."

Those opinions from trustworthy sources, and based upon experience and observation in sections of the United States possessing nothing more or less than Maryland, need no comment. They speak volumes in themselves. They are commended to you.

We may also dismiss the possible thought that whole bar organization is no fit subject for adoption by such a conservative bar as that of Maryland, or that our profession here is being urged to a step which the profession in equally conservative states would not consider.

In his final address as President of the Massachusetts Bar Association on June 10, 1944, Mayo A. Shattuck, Esq., of the Boston Bar, advocated what is here called "Whole Bar Organization," but what he called "Bar Unification," and said:

"It is time, in my opinion, that Massachusetts lawyers should make a final and vigorous effort to renounce their characteristic comfortable routine and to move ahead in triumphant unity to a leadership and service which has hardly been envisioned, let alone realized. It is time to stop inquiring in injured tones why lawyers are not regarded by the public in higher favor. It is time to stop asking a synthetic answer to all of the problems of the bar by attempting to enforce a legalistic rule of exclusion and by asserting a monopoly rooted in tradition regardless of merit. It is time, in brief for lawyers to take a long step forward not only in their self-government and discipline and or-

ganization, but also in the service of our commonwealth."

As a result of Mr. Shattuck's address the Massachusetts Bar Association appointed a State-Wide Committee of 25 members to study the question of the advisability of unification in Massachusetts. The Committee has reported favorably on the subject and the prospects are that bar unification will be an accomplished fact in Massachusetts by Supreme Judicial Court order before 1945 expires.*

About two months ago the Bar of our neighboring State of West Virginia, under the leadership of the voluntary and exclusive West Virginia Bar Association, after discussion and efforts over a period of at least eight years, finally became wholly organized.

Thus the Bars in Massachusetts and West Virginia, and in other states, in ever increasing tempo, are awakening to their traditional opportunities, duties and responsibilities. For that awakening the present and future generations of America may be duly grateful. The defenders of their faith are arising and girding themselves for action.

The plan of whole bar organization was first introduced in this Association at the Annual Convention in 1920 by a discussion participated in by the late Jesse N. Bowen, the late Alexander Armstrong, Judge Morris A. Soper, the then President, Judge Eugene O'Dunne, Sylvan Hayes Lauchheimer, Randolph Barton, Jr., Clarence Bowie, and others. It was the subject of the addresses of our President, Alexander Armstrong, at our annual Convention in 1927, and of our President, the late Judge John Shaw Newman, at our Annual Convention in 1937. It was the subject of a paper by Horace P. Whitworth, of the Alleghany County Bar, at our Annual Convention in 1941, and, finally, after the report of a special committee appointed upon the impetus of Mr. Whitworth's address, the plan was disapproved at this Association's Winter Meeting in Baltimore on January 10, 1942.

It may be presumptuous to bring again to the attention of this Association the subject of whole bar organization. The speaker hopes not. Convinced as he is that the unity of every Maryland lawyer in one organization is vital to the public welfare, with the greatest deference, he suggests the exhumation of this grave question from our achives and its reinstatement to the list of our other interests and activities.

When Maryland has taken its place in the ranks of the states where whole bar organization exists, then we will have made another step toward the realization of Judge McSherry's ideal, "the achievement of the most distinguished encomium which can be spoken of each member of our profession here,— He is a Maryland lawyer." By deserving that encomium as a whole, the Maryland bar would make its greatest contribution to our state and nation in a century.

Let us, therefore, in the lately spoken words of Winston Churchill, "Cry, forward, unflinching, unswerving, indomitable, until the whole task is done!"

*For a more recent appraisal of the situation and prospects in Massachusetts, see page 49.

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Bar Integration Takes Spotlight in Massachusetts and Maryland

INTEGRATION OF THE BAR has taken the spotlight in two important eastern states as a result of proceedings at the recent annual meetings of the state bar associations of Massachusetts and Maryland.

The address "Whole Bar Organization—A Necessity" by President Frederick W. C. Webb of the Maryland State Bar Association, printed in this JOURNAL beginning at page 38, resulted in the adoption by a substantial majority of votes of a resolution authorizing the new president, Judge W. Calvin Chesnut, to appoint a committee to study the matter further and report at the Association's January meeting, where it will be the special order of business. The previous history of the movement in Maryland is reviewed in Mr. Webb's article.

The Massachusetts campaign, in progress off and on over a number of years, had a tremendous boost a year ago in the vigorous address of Mayo A. Shattuck, president of the Massachusetts Bar Association, quoted in the August, 1944, JOURNAL (28:55). At that meeting a Committee of Twenty-five was appointed, representing all groups and areas of the commonwealth, to study the subject and to draft such rules or legislation as it thought desirable.

That committee took its assignment seriously and brought to the 1945 Massachusetts Lawyers' Institute a set of proposed rules and by-laws which formed the basis for a discussion which occupied the entire afternoon program of Friday, June 8. The following day at the business session of the Massachusetts Bar Association, the Association voted to accept the committee's report as a progress report, to continue the committee, and to submit the rules and by-laws it had proposed to all local and affiliated bar organizations in the state for consideration and criticism between then and the next annual meeting, at which time the committee is to report again.

The Friday afternoon discussion was a good one, with the views of both sides ably presented and defended. Lowell S. Nicholson, executive secretary of the Bar Association of the City of Boston, led off with a prepared address in favor of integration of the Massachusetts bar.

"The bar of Massahusetts," said Mr. Nicholson, "is speechless. All of us are members of the bar of Massachusetts, but that bar has no power to speak or to act. The lawyers of Massachusetts can speak, but only individually or through their voluntary associations. The profession itself, the legal profession of the Commonwealth of Massachusetts, of which we are justly proud, can do nothing—because it has no organization. It is a strange situation, when you come to think of it, and certainly it is an unnecessary situation. The Committee of Twenty-Five has now suggested the remedy, and that remedy is that the existing bar of Massachusetts, that is, the persons entitled to practice law in Massachusetts, be given the mechanics for their own organization and their own self-government."

Mr. Nicholson suggested two broad and sufficient reasons for organizing the bar of the state—to enable the profession to meet its public responsibilities better, and to provide a medium for services to and within the profession of direct and personal benefit to every Massachusetts lawyer. He conceded that individual lawyers and the existing bar organizations are doing a great deal already to improve the administration of justice in Massachusetts, but he called attention to the strong emphasis on the public responsibilities of the profession in the plan of organization proposed by the committee, and he offered four reasons why the organized bar could do better:

"1. There will be more lawyers, and from more parts of the Commonwealth, who will take part in performing these professional responsibilities.

"2. These lawyers will work together, not separately and independently as the lawyers are doing under our present system.

"3. The larger amount of money available will provide more paid workers and greater leeway in printing material and in distributing information.

"4. The work done will be more effective

because it will have behind it not merely the influence of some individual lawyer or voluntary bar association but the prestige and influence of the entire legal profession in Massachusetts."

With respect to personal advantages to individual lawyers, the speaker suggested that lawyers would benefit individually if the profession as a whole took adequate steps to answer and lessen the general public criticism of the profession; and likewise, each would benefit if the profession as an effective integrated group could deal adequately with the problems of needed legislation, unwise laws, good judicial appointments, improper conduct of attorneys and unlawful practice of law.

"In the third place," he added, "and beyond these desirable though possibly indirect benefits, it can be expected that the organized profession, with a larger group upon which to draw, and more adequate funds for expenses, would do a better job, and certainly a more widespread job, in such matters as dissemination of legal information, placement service, advisory opinions, lectures and other means for continuing the education of lawyers, public relations, and proper professional publicity. Other suggestions appear in the list of standing committees recommended by the Committee of Twenty-Five, and new fields can be added as needs require."

Mr. Nicholson's address was the only one from manuscript, but throughout the remainder of the afternoon lawyers and judges from all parts of the state expressed themselves vigorously for or against the proposition. Richard Wait, Worcester, a member of the Committee of Twenty-Five, made the leading opposing speech. Prevailing sentiment was favorable, and there are grounds for looking forward with confidence to an early and successful conclusion to the Massachusetts campaign.

A Lawyer's Trust

HERBERT HARLEY

IN ACCEPTING THE INVITATION of the Lancaster County Bar Association to attend one of its meetings and contribute to its programme, I intimated that I would like to speak on a subject of particular interest to the profession. It was suggested, in a reply from the committee that my audience would prefer to hear something of "judicial" reform. Judicial reform, you know, is a subject that lawyers are not unwilling to discuss, while reform of the bar is a safe topic to discuss with judges.

This willingness to reform the other fellow reminds one of what Charles Sumner once wrote:

"The type and formula of most schemes of philanthropy and humanitarianism is this: A and B put their heads together to decide what C shall be made to do for D."

This evening I would like to depart from this comfortable custom. I propose that A and B put their heads together to decide what A shall do, not only for D, but for himself as well. For I will not start with the assumption that the lawyer's first duty is to the public. The lawyer's first duty, in my opinion, is best described in the words of a witty Virginian, as "trying to make tongue and buckle meet." We will not deny a public responsibility, but I shall not make it the cornerstone for my theory of the lawyer's present duty. I hope to show that his duty to himself and to his family, his duty to make tongue and buckle meet, is paramount and not at variance with his public duty with respect to the administration of justice.

Let us begin, as far as may be possible, with

This address, delivered on December 28, 1914, before the bar association of Lancaster County, Nebraska, by the secretary of the newly-organized American Judicature Society, has never before been published except in the proceedings of the Nebraska State Bar Association for that year (Vol. 7, p. 143) and in a small, privately-printed pamphlet still in stock at the Society's office. We reprint it here because it is of permanent interest and importance, not only by reason of its historical significance as one of the earliest utterances in the long campaign for integration of the bar, but because it contains well-stated, sound and convincing arguments and conclusions, as valid today as thirty years ago.

a common understanding. So let it be stipulated, for economy of time, that:

1. The lawyer is an absolutely indispensable factor in human affairs.

2. The lawyer has played a glorious role in history, and in no other land have his talents been more in requisition than in our own.

3. The lawyer, therefore, is worthy of his hire; any successful attempt to deprive him of his due returns must react harmfully upon the body politic.

4. The lawyer is more conservative than other men, but because of this he is neither proud nor apologetic.

5. The lawyer is more honest, notwithstanding current gibes, than other men, which fact is attested by the universal trust reposed in him and the comparatively rare betrayals of this trust.

6. At the present time the random shots of criticism are being concentrated upon the lawyer more than usual.

7. The popular demand for greater efficiency in the administration of justice undoubtedly lies in a great measure within the control of the lawyer, for the profession has a veto power over alleged reforms.

Assuming that we can agree on these fundamentals, I will further postulate that the profession has in recent years attained a certain degree of solidarity; that it is in a measure organized; but that the present organization is entirely inadequate to the needs of the lawyer from either the standpoint of self-interest or from the standpoint of public service. I will not expect you to grant this premise. Let us conceive of this as a debate in which my audience is ranged on the negative side of the proposition I advance.

EXISTING ORGANIZATION OF THE BAR

It is proper first to review rapidly the organization now existing in the American bar and to consider its purpose and its accomplishments. Then we can compare it with the organization worked out in other lands, and determine whether there is opportunity for improvement.

You know as well as I the nature of existing bar associations. The natural unit for organization is the bar of each state because of the uniformity of substantive and procedural law in each state, and its dissimilarity from that of every other state. Within the state, city and county organizations maintain a precarious existence. They are not federated with the state bar association. The larger the city, as a rule, the stronger is the local bar association, because of more definite external pressure. Above all the state associations stands the American Bar Association *in loco parentis*. But the great national organization is still more stepmother than real mother. The connection with the state bodies is tenuous. There is no enforced mutuality in its membership.

This looseness of structure cannot endure much longer. The American Bar Association has attained to such size, and is growing so rapidly, that it must soon undergo a thorough parliamentary reorganization, and a committee is at present working on the details of the scheme. It must eventually mean a federation with the state associations, mutual membership, and the business of the central body transacted by delegates accredited to represent the state associations.

It seems quite inevitable that such changes must come before long, as it is impossible to represent many thousands of members adequately through a mass meeting held once a year. Lawyers are also very strong for a republican form as against a pure democracy, and cannot much longer avoid trying out their theory on themselves.

What are the purposes of this organization, and how well are they fulfilled?

The purposes fall quite readily under three general heads:

1. Social. All the organizations of the bar which we now have would be fully justified by the reasonable need for social intercourse among lawyers, if there were no other reason. This need is perfectly met by the present form of loose and voluntary associations.

I would not minify this need, as do many serious lawyers, who are impatient because the bar associations do not accomplish more tangible good and begrudge the time spent in friendly intercourse.

2. Political, employing the word in its broadest meaning. There is the evident need, especially among a people who govern themselves by acclamation, for participation by the bar in state-craft, for the discussion of proposed legislation, the development of procedural law, and the exercise of influence to obtain good judges. Again voluntary organization is indi-

cated. Our bar associations perform this work very well. A great deal could be said about the patriotic and efficient manner in which the national and state associations are helping to solve great legislative problems. This field of work is so vital to the public that any force which weakens the bar, which makes for disunion in place of solidarity, and so undermines the confidence which the public feels for professional opinion, is a direct loss to successful popular government.

3. The third reason for organization on the part of lawyers is the need for education of the bar, for its proper discipline, and for the conduct of its business. All these things the existing associations undertake to do, and I submit that they do it badly—so badly in fact that their failure reacts prejudicially upon their efforts in legitimate fields of endeavor. As for the proper business of the profession, the existing associations are so unfit that they practically make no pretense of doing this work. It is either left undone, so that great publishing trust grow up to supply the lawyer's demand for the necessary tools of his craft, or it is done, as in the case of lawyer's co-operative libraries, by specially created organizations.

LEGAL EDUCATION NOT A BAR FUNCTION

For reasons which will readily occur to you, the American bar has never possessed in any state sufficient solidarity to meet the demand for a modern education in the law. Originally the only education in the law was at the hands of the practitioner. This personal preceptorship naturally could not meet the ever-growing demands made of it. While it had many brilliant successes to its credit, these successes became progressively less common. A demand had arisen for something which the lawyer individually could not supply, and from the collective standpoint he could hardly be said to exist, for the comparatively slight organization which exists is quite recent. Society met the need by creating a substitute for education by the bar. It is estimated though, that throughout the country, in spite of our numerous law schools eighty-five per cent of those coming to the bar have never received a degree.

In the face of such returns it is difficult to hold that our legal education is wholly satisfactory. In fact the law school deans themselves tell us that it is not, and we know that they are right.

Whatever the average novice has lost by the failure of the profession to monopolize legal education, it must be admitted that the profession itself has lost a salutary exercise. If it were charged with the duty of educating its beginners, it would necessarily react to that prodigious obligation with most wholesome effect. The profession would be unmistakably a learned one, not one which merely has some learned members.

The present associations of the bar are exempt from criticism on the score that they do not control legal education, because at the climacteric period they had not even come into existence. They endeavor however to be helpful by maintaining standing committees on legal education. They feebly attempt to raise requirements for admission to the bar, but strangely enough often show hostility to the proposal for higher standards for admission to the schools. The attitude, on the whole, is that it makes no difference how many young lawyers are licensed, because a few years at the most will weed them out, and meanwhile they create business for the older members of the profession.

GOVERNMENT OF THE BAR—BY WHOM?

And now we have come by easy steps to the really big question: How do the bar associations succeed in disciplining the bar? The obligation is clearly assumed. We frankly admit by our actions that we cannot abide solely by the theory that the lawyer, being an officer of the court, is to be disciplined by the Court. Courts can enforce obedience to a few concrete rules. It may be if our Courts were quite different from what they are they could do a good share of the police work for the profession. But not all. Lawyers are not in court all the time, by any means. Some are seldom in court. The public does not discriminate, but holds the profession responsible for the conduct of the individual lawyer, in court or out. The public pays little attention to the letter of the rule but tries and convicts on hearsay evidence of character witnesses and sends a bill for the fine it imposes to the bar association.

In some form or other the bar cannot escape this obligation to keep its ranks decent even if it should seek to escape. Any failure to do so results in a heavy penalty. And so we see the association endeavoring to accomplish this necessary work month after month, year

after year. Like any job of policing, if not done effectually, it becomes more difficult. Wherever it is thoroughly done, few complaints arise, but in very few jurisdictions is it really done with any degree of thoroughness.

There is no need for going into detail as to the difficulty of the task. We know thoroughly well why high minded lawyers shrink from this odious work. The question is, whether it must necessarily be so difficult, not to say hazardous. Possibly the reason lies in the fact that the means at hand are inadequate.

Now we have pretty well boxed the compass with respect to existing organizations of the bar in the typical state. Much of the work for which the associations exist is capably accomplished. Part of it, and especially the not inconsiderable part of discipline and government is done ineffectually or not at all. What is the reason for this? Does it not lie in the unique characteristic of our bar associations, that of being voluntary and exclusive? After all, as compared with organizations of the bar existing for similar purposes in other leading nations, the one great difference is that ours are voluntary and exclusive, that theirs are corporate and inclusive. With us less than a majority of the bar of a state consents to enrollment, and only a trifling moiety ever attend meetings consecutively. Many of the best lawyers stand aloof. In the bar of every other nation, on the other hand, every lawyer is *ipso facto* a member of the bar association. The bar and the bar association are identical. The bar is a corporate body, a living, thinking, acting entity. A novice becomes a lawyer and a member of the bar subject to its discipline at the same time and by the same authority.

Our voluntary bar associations, it is true, hold open the door, and invite all lawyers to enter. Instead of actually getting all lawyers in as members so they can be dealt with, they are perforce content with the hollow theory that some time the membership will grow to embrace nearly all. But there is also some conscious exclusiveness. The voluntary associations want to keep clear from the unfit in the profession. They fear what would happen if clever shysters should get in and worm their way to the top of the organization.

The corporate bars of other lands, like the Catholic Church, receive all. Exclusiveness is inconceivable.

AMERICAN BAR IS UNIQUE

You will observe that I make the big point of difference between American associations of the bar, and foreign ones, in this matter of being voluntary and exclusive on the one hand, or corporate and inclusive on the other. I am aware that writers have not stressed this point so strongly. All American lawyers have some familiarity with the bar of Great Britain. Doubtless the idea is very common that the difference between that bar and ours is the difference between aristocracy and democracy. The obvious American intention was to create this difference. In our revolutionary break with the feudalistic government, law, and society of the mother country we determined upon trying to live according to transcendental theories which certain Frenchmen, trying in their way to break from the bondage of feudalism, had advanced. We sought to create a society without rank and without distinctions. Declaring that all men are born equal we assumed that they ought to remain so and be happy.

As we see it now the wonderful thing is that we did so live. The levelling circumstances of a frontier life were potent enough to permit a complete breach with tradition, so that we, a century ago, threw off the shackles of the feudalistic state which other peoples are getting rid of only now at a fearful cost in blood and treasure.

The intention then was to have a democratic bar in the United States, if any. There were plenty who believed the bar a wholly unnecessary, not to say pestilential institution.

At any rate they would prevent it from having a corporate and recognized existence. They would undermine it by making admission casual. This would prevent the lawyers from becoming a social group or class. The American bar is even now just emerging from the conditions imposed by a people slightly tipsy from too heady doctrine. That the character thus given our bar has lasted over into an entirely new regime, shows that it was suited to a frontier civilization. It is only now, when we suddenly realize that we have pushed our frontier clear across the Pacific that we notice that the old doctrines fail to square with modern conditions, that not everything that is called democratic is truly democratic, that it

is possible to reach for the shadow and lose the substance.

Doubtless the American lawyer believes that the great difference between the bars of the United States and of Great Britain lies in the fact that in the older nation there is an absolute barrier between the ranks of the advocate and counsel, or barrister and solicitor, as they say. That is a great difference admittedly, but it is not so fundamental, in my opinion, as the difference which I attempt to emphasize. I ask you to note that the solicitors constitute an inclusive corporate body, and that the barristers are on practically the same footing, though their charter has a derivation similar to that of the English constitution.

THE BAR OF A NEIGHBORING NATION

In proof of my theory I call your attention to the bar of Canada. Here we have a nation, which excepting the Province of Quebec, inherited the same common law as the states. We have provinces which are in all respects, industrially, socially, and politically, very close to the states of the Union. It may be interesting to consider the bar of the typical province, Ontario. This bar is a corporate entity by virtue of the Law Society Act, dating from 1797. The Law Society of Upper Canada, as it is called, embraces every practitioner in the Province of Ontario, and it gives to every one an equal and indefeasible right to participate in the management of the bar. After passing through the frontier stage Ontario retains but a vestige of the English distinction between barrister and solicitor, which supports my view that this distinction is not fundamental, but that it is a mere form of specialization suited to a compactly populated country and unsuited to a sparsely settled country. There are only a handful of men in Ontario who are solicitors and not barristers. The solicitor as such has no audience in court and as only a slight compensation is made for this sacrifice by the admission requirements, it is very rare that a beginner elects for the narrower branch. The barrister on the other hand, maintains his connection with the solicitor class, as a matter of convenience, just as a firm of lawyers, on this side of the boundary keeps a notary in the office. In common speech the terms barrister and solicitor are seldom heard, all being denoted in common as lawyers.

Quoting from Mr. Justice Riddell, the simple machinery of the Ontario bar, is thus described:

"Every five years all the barristers in the province vote by ballot for thirty benchers, who with certain ex-officio members form the governing body or bench. Collectively, the benchers form convocation; they fix the standard of education, conduct examinations, and call to the bar. It is necessary for the candidate for call to have been an admitted student of law for five years or for three years, if he has a degree of B.A. or LL.B. in some recognized university. After being called by convocation, the young barrister is presented by a bencher to the court; he is then sworn, and thereafter he has the right of audience. The court does not call to the bar, and has nothing to do with the curriculum or examinations. Nor can the court hear anyone not 'called' by the Law Society of Upper Canada except a party in his own case. Non-professional agents are allowed in the division courts, but not in the higher courts.

"Convocation has established and maintains a law school at Osgoode Hall, at which every student must attend; it appoints the principal, the lecturers and examiners. Convocation also fixes the education of solicitors; and upon examining them grants a certificate of fitness. The same requirements as to time of service as an articled clerk are imposed as in a case of a barrister. Upon the certificate of fitness being presented to a judge of the high court, he grants a fiat for admission of the candidate as solicitor, and the oath is administered before the judge. Thereafter the new solicitor may practice in all the courts as solicitor.

"Every barrister and solicitor pays an annual fee to the Law Society and is subject to discipline of the society at all times. Any member may be removed or disbarred for cause."

Now, if it appears that an organized bar of such long standing as the Law Society of Upper Canada, having a corporate and inclusive organization, makes a striking success of self-government and discipline, I may be conceded the point, I hope to make that our own voluntary and exclusive bar associations fall short in this field of government and discipline because they are voluntary and exclusive. This is no attack on our bar associations. I am simply furnishing them with an adequate excuse for their shortcomings.

ONTARIO BAR IS SELF-GOVERNING

In a single paper one can't go into all the details of this big question. I would like to devote sufficient time to convince the skeptical, if there are any, that the Law Society of Upper Canada does succeed in striking manner in dis-

ciplining its membership. The reasons are not elusive. They arise from ample authority and absolute responsibility. There is also the most forceful self-interest, both on the part of the individual lawyer to obey the simple ethical code of the society, and of the entire membership, represented by the benchers, to enforce these rules drastically. Consider the situation of the individual lawyer; he must spend five years in preparation for the bar and must pay a liberal fee for entrance into this monopoly. He knows that any offense on his part means discipline. He may have confidence that for a long time he could fool the court, but he knows that he cannot fool his fellow practitioners for long. The enforcement of discipline costs him the forfeit he has posted, years of study, the prospects of a good living in a profession not overcrowded, and subjects him to a social and political stigma. It is clear which way his self-interest lies. The society has the responsibility squarely placed on its shoulders, with ample power. Any compassion for shystering smirches every lawyer. The benchers can afford to be drastic, but not sentimental. It is clear which way lies the self-interest of the collective bar. Whenever self-interest has been made to coincide with public interest, there you have the perfection of political contrivance. There is no further desire.

I have given the theory of self-purging by the Ontario bar, and I can assure you that actual practice is in no wise inferior. I made a special effort to get the opinion of laymen on the bar by questioning all sorts of men, business men, bankers, labor unionists, and so forth. There was unanimous agreement that the Law Society of Upper Canada, by occasionally driving a barrister from its membership, kept its ranks as nearly pure as could be expected. The lawyer who might have a little doubtful streak in his makeup knows too well the consequences of carelessness. The result is that the attitude of the public toward the profession is one of steadfast respect.

Not only are the consequences of loose conduct in Ontario more disastrous to the lawyer than with us, but there is less temptation. We have left the vastly important matter of regulation of numbers at the bar almost wholly to competition. While old practitioners, many of them competent to grace appellate courts, often have to do the work of beginners, in order to make a living, the beginners are naturally subjected to a starvation test. That is what competitive survival means. It weeds out the good with the bad. It puts a premium on sharp practices. How many young lawyers have not come face to face with this philosophy: "If I risk it, I may be detected and thrown out. If I don't do it, I will surely be starved out." Too often those who refuse to stultify themselves are forced out and those who make terms with their self-respect are rewarded by success. Here we have self-interest running directly athwart the course of public welfare.

LAWYERS' BUSINESS DONE CO-OPERATIVELY

The Law Society of Upper Canada also transacts the business of its members adequately. It publishes decisions by the provincial courts, first in pamphlet form, and later abridged in library form, with the deadwood cut out, and this service is included in the moderate annual dues of fifteen dollars.

By managing the educational side it accomplishes a very desirable unity between the college, the bar, and the examining board. All three are one. There can be no continuing quarrel there, as with us, between the law school, the legal education committee of the bar association, the state examining board, and possibly also the supreme court and legislature.

The Law Society of Upper Canada has a powerful self-interest in limiting the number of lawyers in the province. It has considerable power to restrict the output of new lawyers. Now if this were equivalent to power to restrict the production of cotton, or sugar, or nails, it would be a cruel monopoly. But you can't convince even the Socialist in Ontario that there are not enough lawyers.

As to the other functions of bar organization, those of political participation and of social intercourse: I cannot find that the Law Society of Upper Canada as such has developed the opportunity for participation in public affairs.

The reasons that suggest themselves are these: To take a stand on a political question is to develop internal dissension. The Law Society has a very definite duty to perform for its own welfare. It has plenty to do if it does this great work well. It has such solidarity that it would be almost unfair to launch itself, as a unit, against any political proposal, but there is the commoner situation that unity of thought on public matters would be virtually

impossible. Canadians do not conduct their government as we do, through a mighty hubbub in the market place, where the most raucous voice gets the widest hearing. They have responsible party government. They look to the party for every accomplishment. As the Law Society inevitably embraces the men of all parties, political action would be suicidal. Of course, individual lawyers have the same right and opportunity to indulge in political discussions in Ontario as in the States, and embrace the opportunity quite as much.

The Law Society of Upper Canada also falls short of our bar associations in the matter of social intercourse. After one hundred years of history this is an undeveloped side, and naturally must remain such, because the Ontario bar, being all inclusive and utterly democratic, cannot meet social requirements. Social ties grow not from democratic relationships, based upon statute law, but are wilful and voluntary. An attempt to develop the social side might prove dangerous, because the Law Society would in a few years be dominated by the comparatively few of strong social inclination, or ambitious to control, who would regularly attend meetings and form a clique which would lobby for its own interests as an aristocratic minority.

Some evidence that this view is well founded is afforded by the fact that only this year there was formed in Ontario a bar association very similar to those existing in the States for the very purpose of furthering the social relations of such Ontario lawyers as choose to join it. The new organization is no rival of the old. They have their separate fields. They are complementary and together afford every needed form of organization for the lawyers of the province. But if there should be competition between them, so that one had to be sacrificed, there can be not the slightest doubt that the voluntary, exclusive, loose and social organization would have to yield to the inclusive, incorporated, democratic order which stands on as firm a foundation as the courts themselves.

I regret that I cannot reinforce my comparisons by examples from the provinces further west, which have grown up within the last decade or two. They all have incorporated bars, with a one-man, one-vote form of government. They depart in such unessential points as the number of benchers, the length of terms, the annual dues, and so forth, from the Ontario society, which is their evident model. In all of them there is absolute responsibility for their members and the least of them, together with ample authority to discipline. I do not mean to say that the courts do not play a part in disbarring a member, but the essential work of disciplining falls to the bar, and the court's role is largely that of seeing that no injustice is done.

CLOSER ORGANIZATION NEEDED

The growing efforts of our state bar associations to discipline lawyers indicates a disposition to accept the responsibility. To leave this work to the courts means to leave it undone. Real reformation of the bar must be the result of a new and larger self-interest, a self-interest which embraces the entire profession. The bar has its share of conscientious men. How is the conscience of the sensitive to become the criterion of the entire bar? Only one way is possible. It must come by welding all the lawyers of a state into one closely knit organization. Given a genuine organized solidarity, the sentiment of the majority will speedily control the conduct of all. Given such an all-inclusive organization and we will for the first time have a genuine bar, an entity with a mind and a will.

If I did not believe confidently that such an ultimate evolution is as possible as it is desirable, I would not ask serious men to think of it. Roughly my reason for confidence lies in the fact that in this direction, and this only, lies a conciliation of the self-interest of the lawyer and the welfare of the public. The lawyer must render a higher type of service and he must be paid a higher wage. The easy equality of the frontier has given way to a demand for efficiency, and to meet this demand society is specializing and stratifying.

The lawyer has observed this crystallization of society with jealous interest. He alone has not been swept off his feet by the insistent latter day magnification of society as against the individual, because he has remembered that society can be no more than the individual multiplied, and that every right that is taken from the individual is in the end a social deprivation. But the lawyer has perhaps not properly estimated the indirect way by which the individual works out his salvation. In the face of the

gigantic social movements of our times constitutions and courts are often of no avail. A supreme court, with sublime faith preserving a woman's constitutional right to contract to work twelve hours a day, cannot give that woman equality of opportunity with the millionaire or the combination that employs her. Her only hope lies through group action. The individual preserves his rights by combining with other individuals in like circumstances to combat the social forces that try to strangle him, for an organized society can be as merciless and tyrannous as any dictator.

The whole labor union movement with its collective bargaining is evidence of the trend of events. The new industrial democracy of our great cities is proof. The organization of employers in like trades everywhere is proof. In other words society is stratifying to avoid the character of a mob; to develop its special talents; to enable the individual to survive in groups; to further economic efficiency, the remorseless urge of the age.

If you are interested in the way this drift is affecting our law you will want to read an article entitled, "A Feudal Principle in Modern Law," which your own incomparable Roscoe Pound contributed to the October number of the *International Journal of Ethics*. In this article reference is had to the departure from the modern theory of social compact and contractual relations, supposed to be the philosophical cornerstone of our liberties, in the workman's compensation statutes. In these acts rights are made to spring not from a contract, but from a relation. The employer is not guilty of any tort, but is required to pay damages because the business should, in the interest of society, stand its losses. This is identical with feudal rights, which grew out of the relations that the class which the individual belonged to, bore to the feudalistic state.

If the lawyer is to fill his role to the utmost he will develop class consciousness; he will acquire solidarity of organization. As a voluntary movement within the bar this is a present phenomenon. Possibly the attainment of ultimate solidarity as an incorporated bar may come by the slow process of evolution through voluntary associations. It may "broaden down from precedent to precedent." Or it may come swiftly from an understanding of the need on the part of the bar and people of a progressive state.

For an actual beginning a very few sections of statute would suffice. The duty of examining candidates for the bar could be vested in a corporation comprising all the lawyers of a state. Then a concise scheme for centering the authority in a representative board, chosen by the members, could be provided. There should be no disturbance of the functions of the voluntary bar associations. On the contrary such associations should cheerfully assume the parentage of the infant order, and nourish it into a lusty youth.

I can only submit this seemingly quaint idea, not urge it upon you. To make the evangelism effective there should be a soapbox campaign among the lawyers of the state. They should be addressed as were the gladiators: "Ye call yourselves Romans, but ye know that ye are slaves!"

No judicial system can be stronger than its trial judges. A learned and brilliant court of last resort can give the system a high reputation abroad, but that reputation will be hollow unless nearly equal merit is found in the trial courts. To use a commercial figure, the appellate court may furnish the patterns, the samples, and the advertising; but the trial court must be relied on for the bulk of the product. I venture to say that it requires as broad and strong a man, in character, personality and judgment, if not in sheer intellect, to preside well in a trial court that has succeeded in retaining its common-law powers, as to sit in a court of last resort.—*Henry T. Lummus.*

United States Commissioners

NORMAN J. GRIFFIN

THE OFFICE OF United States commissioner is an old one under the government of the United States. With varying authority, the office is closely analogous to that of a justice of the peace for the United States Government.

A United States commissioner is a judicial officer and within very narrow limits, exercises the functions of a United States judge. As an adjunct of the court, he possesses independent judicial powers, subordinate to those of the court appointing him.

A district court cannot set aside an order of a United States commissioner directing a return of property seized under his search warrant, but such an order is a judgment of the district court from which a writ of error lies to the circuit court of appeals.[1] They act in a quasi-judicial capacity, depending for their powers upon the acts of Congress, which over the years have conferred jurisdiction of varying nature upon them.

The office was created in 1798 for the purpose of taking bail for the appearance of people charged with crime. They became known as commissioners of the circuit court and on the abolishment of these courts, became known as United States commissioners.

The duties of the office include in addition to taking bail, the taking of affidavits, oaths, recognizances, affirmations, depositions *de bene esse* and acknowledgements in United States courts and under the laws of the United States and the compelling of witnesses to answer letters rogatory. As justices of the peace, they can arrest and hold to bail in criminal cases under the laws of the United States; summon masters of vessels in cases of mariners' wages and arrest deserting seamen, and take bonds and stipulations in admiralty cases.

United States commissioners are empowered to enforce extradition treaties, and the awards of foreign consuls; to issue search warrants under the specifications of certain acts of Congress; to discharge persons imprisoned for debt and convicts who are unable to pay their fines. In addition they can hold to bail to keep the peace and take evidence and proofs in bankruptcy matters. Until the repeal of the Chinese Exclusion Act they had the right to determine the status of Chinese persons as to citizenship.[2] They have power to enforce summonses by the Collector of Internal Revenue to produce books and give testimony,[3] and when specially authorized to try cases where the punishment is not in excess of six months imprisonment or five hundred dollars' fine.[4] Commissioners also order removal of prisoners from one judicial district to another.[5]

The district court appoints United States commissioners, preferably lawyers, when available, for a term of four years, subject to reappointment. Their number and location in a district is solely within the discretion of the appointing court.

United States commissioners may also take bail in civil cases; and where the civil rights of citizens have been violated or crimes committed against the elective franchise have taken place they may issue warrants, appoint special persons to serve the warrants and if necessary appoint a posse and call on the armed forces to aid in the execution of the warrant.

In a proper case they may issue a warrant for the arrest and imprisonment of a judgment debtor on an execution issued out of a federal court.

A United States commissioner serves in only one district at a time. He has no power to punish for contempt of court, although he may certify a matter arising out of contempt, to the district court for action. In Alaska, he has probate powers.

When a defendant is held in bail for court by a United States commissioner, he may be committed to prison in default of bail.

In certain national parks there is special statutory authority for United States commissioners.

There are certain restrictions as to who may not be United States commissioners. If the attorney general approves, a clerk of a district court may be also a United States commissioner.

The author is United States commissioner for the Eastern District of Pennsylvania, in Philadelphia.

1. *U. S. v. Maresca,* 266 F. 713
2. *U. S. v. Hom Hing,* 48 F. 635
3. 26 U. S. C. 3615 (e)
4. 18 U. S. C. 576 a et seq.
5. 18 U. S. C. 591

A marshal or deputy marshal, a United States district attorney or his assistants, a jury commissioner, bailiff, crier, juror, janitor of a government building, a civil or military employee of the government may not be a United States commissioner. Nor may a person related by affinity or consanguinity to a judge be appointed by him to be a United States commissioner. At the present time a referee in bankruptcy may not hold both offices, although there is now pending legislation to permit this.

On appointment a United States commissioner takes an oath of office. He may use the franking privilege for his official mail, although he must pay for his own phone and telegraph messages.

United States commissioners are subject to removal by the court appointing them. No statute provides the procedure. However removal proceedings are usually started by a rule to show cause, on motion of a United States attorney and the commissioner is by notice allowed to defend himself. However, such action may not be capricious or arbitrary.[6] The court should move with caution and every presumption of innocence in a criminal case exists in favor of the accused commissioner. There is a further criminal offense for a commissioner to ask, receive or agree to take any property, money or value to influence his official acts and on conviction he may be fined not more than two thousand dollars or imprisoned for not more than two years or both.

The United States commissioner has an official impression seal for use in his office. He is compensated for his services by fees established through act of Congress.

All criminal matters before a United States commissioner are docketed. His court officer is the United States marshal of the district. The practice before him in criminal matters conforms to the practice before justices of the peace in his state.

A criminal case is started by a sworn complaint setting forth the facts and a warrant of arrest issued. The complaint must follow the form used in the state. A certified copy of the complaint accompanying the warrant confers jurisdiction on a proper officer other than the one issuing the warrant, to hear the case. "John Doe" warrants should not issue unless they contain a sufficient description of the defendant, that the marshal may identify him. Incidentally a warrant only runs in the district of issue.

Extradition is the surrender by one nation to another of a person wanted for crime in the demanding country. Where there is a treaty between the United States and the demanding country, governing jurisdiction, the United States commissioners, when authorized by any of the courts of the United States, issue warrants of arrest and hold hearings to determine whether or not extradition should be had. The procedure is governed by the terms of the treaty.

Removal is concerned with the removal of a person charged with crime against the United States from one federal judicial district to another.

A warrant issues in the district where the person is, based on an existing warrant, indictment, bench warrant or commitment in another district.

The United States commissioner at the hearing, must determine the identity of the defendant with the accused and whether probable cause is established.

Where an outstanding indictment lies, the production of a certified copy establishes, subject to rebuttal, a prima facie case.

If removal is determined on, the United States commissioner sets bail for the defendant's appearance in the demanding district to which he may be taken physically if the bail is not posted.

This summarizes the duties of an active, important, but not well known office under the United States of America.

6. *In re Eaves*, 30 F. 21

The average main street lawyer is the principal guardian of the traditions of our profession and of the best that there is in our civic and social life.—*A. M. Kvello.*

Jury Bills Before House Judiciary Committee

A hearing on the so-called "jury bills," now pending before Congress, was held by the House Judiciary Committee on June 12 and 13, and four United States district judges, Honorable John C. Knox of the Southern District of New York, Honorable Harry E. Watkins of West Virginia, and Chief Justice Bolitha J. Laws and Honorable James M. Proctor of the District of Columbia, testified in support of the measures.

These bills have been introduced in the House by Congressman Emanuel Celler of New York. The first bill (H.R. 3379) establishes uniform qualifications for jurors in the federal courts and permits women and other classes which are exempt by state law to serve; the second (H.R. 3380) relates to the appointment of jury commissioners and increases their compensation, providing for full-time commissioners where necessary, subject to the approval of the Judicial Conference; and the third bill (H.R. 3381) provides for some changes in the compensation of jurors by increasing their subsistence and travel allowances.

The three bills are the result of prolonged and close study by a committee of district judges appointed by the Chief Justice of the United States upon the authorization of the Judicial Conference of Senior Circuit Judges in 1941 and were approved by that Conference in 1943. Judge Knox, the chairman of the committee, has long been an advocate of strengthening the jury system by securing better qualified jurors.

The bill to establish uniform qualifications for jurors provides that all citizens of the United States who are twenty-one years of age and over, may be called to serve either as grand or petit jurors, unless they are subject to stated disqualifications or unless they are excused as provided in the bill. The grounds of disqualification are conviction of a felony or of a misdemeanor involving moral turpitude, lack of knowledge of the English language, or physical or mental infirmities. Persons who have previously served on a jury within a year or who are public officers of the United States or of the state and devote the greater portion of their time to their official duties may claim exemption from service, and persons on active duty in the armed forces are wholly exempt. It is further provided that the district judge may excuse any person or class of persons from jury service if he deems that the public welfare will be served thereby.

The purpose of this bill is to abolish the many out-moded and unnecessary exemptions and disqualifications which still exist in the laws of a number of states, and to make available for jury service in the federal courts all persons who are capable of satisfactorily performing the important duties of jurors. It sets up uniform standards for all district courts. Under its provisions women, as well as men, are qualified to sit on juries. Discretion is left with each district judge to excuse persons who would suffer undue hardship by being called to serve and to excuse classes of persons such, for example, as lawyers or doctors wherever it appears that this is in the public interest. The committee found that at the present time throughout the various states there are at least sixty-eight general classes of possible grounds of exemption. They cover so wide a range of business, professional and trade groups that they must, of necessity, eliminate from jury service a great number of competent persons. By eliminating the great majority of these exemptions, the committee felt that the field from which jurors for the federal courts are selected would be materially enlarged and greater opportunity would be afforded to pick jurors representing a true cross-section of the community.

The second bill, which provides for the appointment and compensation of jury commissioners, revises the present machinery for selection of jurors, by setting forth in some detail the duties of the jury commission consisting as previously of a jury commissioner and a district court clerk, by giving the district judge general supervision over the activities of the jury commission and by increasing the compensation of the jury commissioners. In order to provide the commission with a more thorough knowledge of the group from which names are chosen to be put into the jury box, the bill permits the commission to send out

questionnaires to prospective jurors and to hold interviews with the individual jurors in places where this is feasible. Both of these systems are already in use and where they are being used the testimony of the judges indicates they have improved the quality of the juries. The bill provides that if the district judges of any district are of the opinion that a full-time jury commissioner should be appointed in the interest of the efficient operation of the jury system, that may be done with the approval of the Judicial Conference, and a salary of not to exceed $5,000 per annum may be fixed by the Conference.

The fundamental purpose of this bill is to improve the quality of juries in the federal courts by providing for the giving of more time and attention to their selection by the jury commissions, while at the same time preserving the representative character of the juries.

The third bill deals with various details in reference to the compensation of jurors and their reimbursement for travel expenses. At the present time, the great majority of federal courts pay round-trip travel expenses to jurors coming from outside of the city or town where court is held, covering only one trip a week, and for such jurors as stay overnight at the place of holding court no subsistence is provided in addition to the regular fee of $4.00 per day. The bill provides for daily travel expenses for such jurors at actual cost not to exceed $2.00 per day or where daily travel appears impracticable for an allowance of $2.00 per day for subsistence. Provision is also made to alleviate the hardship which is caused when a juror has to serve for over thirty days in the trial of a single case. Where this happens the district judge may allow a per diem jury fee of not to exceed $10.00 for every day in excess of thirty days during which the juror is required to hear such a case.

Judge Knox told the committee that nineteen bar associations had approved the fundamental principles of these bills and that the number of states in which women are not qualified to serve on juries had been reduced to seventeen. Judge Proctor emphasized the necessity for more adequate compensation of jury commissioners and Judge Watkins spoke of the need for subsistence and increased travel allowances for jurors living outside of the city where they are called to serve. Chief Justice Laws brought out the fact that the bills covered in substance the recommendations of a committee of the American Bar Association made in 1938 and adopted at the annual meeting of the Association in that year.

Criminal Rules Institute Announced

An institute on the new federal rules of criminal procedure, somewhat similar to the institutes held in 1938 and 1939 on the civil rules, will be held at Catholic University law school, Washington, D. C., sometime in October, it has been announced by Dr. Brendan F. Brown, acting dean.

The plan is to have the institute addressed by a number of speakers, dealing with various topics covered by the rules, with an opportunity for questions and informal discussions from the audience. The institute will be open to the public without charge. Members of the bench and bar, as well as law students and all others interested, will be invited. The exact time and place, and the names of the speakers, will be announced later. Alexander Holtzoff, secretary of the Advisory Committee on Rules of Criminal Procedure and a member of the school's law faculty, is in charge of arrangements.

Veterans and Bar Admissions

Speaking of the men in the armed forces, Dean Albert J. Harno writes as follows in his annual letter to the law alumni of the University of Illinois:

"The debt we owe these men is boundless. Deeply grateful to them, we the people of America will want to do everything in our power for them. Even so, we shall never be able to repay them for the service they have rendered. We can, however, do many things for them. Should one of our means of compensation be that of making concessions to them toward their admission to the bar? If this question involves assistance by way of scholarships and grants of money to aid them in securing an education, the answer should be an emphatic 'yes.' If it involves the evaluation of the training they have had in the armed forces and translating that training whenever it is equivalent to college work into college credit, the answer again should be 'yes.' Indeed, this procedure has already been approved by various agencies, including the American

Bar Association. But if it involves granting shortcuts for admission to the bar, the answer should be 'no.'

"That is, in fact, the clear answer the American Bar Association has given. With full understanding of the great debt members of the legal profession, along with all members of the American public, owe to the men in the armed forces, the American Bar Association, nevertheless, has declared it is firmly of the opinion that it would be a disservice to returning veterans to provide them with shortcuts for admission to the bar, since such shortcuts would tend to make possible and encourage admission without adequate preparation."

Appendix Method Disapproved in New York

The "appendix method" of submitting the record on appeal was rejected by a committee of the New York State Bar Association in a report submitted at the recent annual meeting. The method, which involves printing only portions of the record pertinent to the appeal as an appendix to the brief instead of the whole record, was originated in the fourth federal circuit, and had been advocated for New York by Mr. Harry D. Nims of the New York judicial council in a paper published in the October *New York State Bar Association Bulletin* and also in this JOURNAL (28:73).

The committee's chief objection was based on the fact that while federal courts do not review the weight of the evidence on appeal, the New York Appellate Division does. This issue is raised in more than twenty-five per cent of the appeals to that court, the committee asserts, and it asks how the court can conscientiously pass on it without considering all the proof at the trial. "In such instances must each judge wait his turn to read a single typewritten record when the appellate court consists of five or seven judges?"

"There is no need," the report concludes, "to import what may be regarded as a novelty but in fact is fraught with grave dangers for the bench and bar."

[*Editor's note:* The committee evidently overlooked the fact that printing relevant portions of the record is quite as essential to the appendix method as not printing irrelevant portions. Granting that in twenty-five per cent of the cases this would require printing the whole record, might there not be some advantage in using the appendix method in the other seventy-five per cent?]

The Reader's Viewpoint

That Name Again!

[Re Editorial, June, 1945, p. 4.]

We question the status of those who abjure
The use of four syllable *judicature;*
One must be, in phrasing, of limited stature
Who can't drop a mouthful of good *jooda-catcher!*
In truth, of such lawyers there ought to be fewer
Who stammer and blush before *jew-dickey-chewer.*
We think it's in line with a counsellor's nature
To do it the hard way and say *joody-kate-cher.*
So cling to the precedent—those who can't say it
Should never bill clients expecting they'll pay it.

C. A. WALDRON.

Minot, N. Dak.

Legal Aid Work and Office Overhead

To the Editor:

The article "Will Socialized Law Be Next?" by John S. Bradway, in your June issue [29:13] will arouse a good deal of interest. In Vermont we do not have much call for legal aid, as most communities are small. Nevertheless, in a city of 16,000, the size of Rutland, where I formerly practiced, there is a possibility that such aid would be of considerable value in less prosperous times.

During the '30's, I was one of the attorneys designated to assist in such legal aid work, and from that brief experience and some thought on the matter since then, I believe there is one serious handicap to the legal aid department as it is now carried out, and I want to

call this to your attention so that it may have some consideration if you find it has any merit.

A fair proportion of the legal aid seems to be handled by attorneys who are starting out in the law practice, on the theory that they have more time and the time they are devoting to the work is of less value and therefore less out of pocket to them. This is all as it should be, within reason, but the rub comes because the attorney furnishing legal aid is also contributing a substantial amount of out of pocket money because of his office overhead, which he can ill afford to do. It seems to me that for this reason a young lawyer is bound to think pretty seriously before he agrees to take on legal aid work and if he doesn't think about it seriously he is going to find his contribution to charity is a pretty substantial cash item.

It is my suggestion that the members of a local bar could well afford to contribute a small sum to create a fund for the sole purpose of covering the overhead charges of attorneys engaged in this work. This can be analyzed from numerous angles and of course might even be subject to abuse, but there is a possibility you might want to look into this to see if it has any merit, and therefore I am submitting it for what it is worth.

STANLEY L. BURNS.

Proctor, Vt.

The Literature of Judicial Administration

BOOKS

The Missouri Plan for the Selection of Judges. Jack W. Peltason. University of Missouri Studies, Vol. 20, No. 2. Columbia: University of Missouri, 1945. 114 pp. Paper, $1.25.

Nearly five years ago, in November, 1940, the people of Missouri adopted a new and radically different plan for the selection of their appellate judges and the trial judges in their two most populous cities. Vacancies were to be filled by appointment of the governor from a list of names submitted by a carefully selected nominating committee, and the tenure in office of the judges thus selected was to be decided by the voters on a ballot limited to that question only without competing candidates. Such a procedure had received the endorsement of the House of Delegates of the American Bar Association three years before, after many years of study and discussion by that and other groups and organizations, and this was its first test in actual usage.

Lawyers, judges and politicians throughout the United States have been watching Missouri closely during the intervening years. Dissatisfaction with present methods of judicial selection, especially where popular election prevails, is widespread, and success of the Missouri experiment will encourage other states to follow its example, while if the hopes of the Missourians are not borne out, the search will be continued along different lines.

The Missouri plan is now nearly five years old. Two strenuous attempts to do away with it have been resoundingly defeated. Every act under the plan has been publicized and scrutinized and every possible inference regarding the plan, favorable and unfavorable, has been drawn therefrom. The time has just about arrived when the "Missouri experiment" is past the experimental stage.

With the arrival of that time has arisen a need for a comprehensive survey of the Missouri plan and its operation for the use of students of judicial administration in general and especially for the benefit of those at work on problems of judicial selection in other states. Such a survey and study has been made by the author of the book here noted.

Going back to the beginning, he reviews the history of judicial selection in Missouri from the framing of the first constitution in 1820 up to the present time; the origins of the Missouri plan and its development and drafting in Missouri; the history of the several campaigns to secure its adoption in Missouri, their organization, backing and methods; the various arguments for and against the plan as advanced by its advocates and opponents; a thorough analysis of its mode of operation and of its record in practice; and, finally, an eyewitness account of the plan's tempestuous career through the constitutional convention of

1943-1944, from which it emerged unscathed.

This monograph, a University of Missouri publication, was written from the standpoint of scholarly research and not for the purpose of either attacking or defending the plan. In the course of his study, however, the author obviously became convinced in his own mind of its merit, and in his chapter on conclusions he remarks:

"This method of judicial selection appears to be distinctly superior to the elective system. It is the author's belief that such a plan, or a variation of it, will be adopted by many of the thirty-six states which now select their judges by direct popular election."

The book is a most important contribution to the literature of judicial administration, and should be in the possession of every organization and committee interested in problems of judicial selection in other states.

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